

# Joint Select Committee on Historically Underutilized Businesses

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Opinion Committee



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FILE # ML-39728-97

I.D. # 39728

August 15, 1997

The Honorable Dan Morales  
Attorney General of the State of Texas  
P.O. Box 12548  
Austin, Texas 78711

RQ-985

Re: Request for Attorney General Opinion Regarding the General Service Commission's  
Authority to Promulgate Rules Under Section 2161.002(a)(2), Texas Government Code

Dear General Morales:

This is a request for a formal opinion from the Office of the Attorney General as to whether the General Services Commission rulemaking authority for the Historically Underutilized Business Program, authorized in Chapter 2161, Texas Government Code, authorizes the promulgation of rules to implement certain portions of H.B. 1, Article IX, Section 124, 75th Legislature, General Appropriations Act.

Currently, Section 2161.002(a)(2) reads as follows:

"To administer Subchapters B and C, the Commission may:

...(2) adopt rules."

This past legislative session Article IX, Section 124.3 of the General Appropriations Act added the phrase "principal place of business in Texas" to the definition of Historically Underutilized Business.


My first question is whether the General Services Commission is authorized to promulgate rules to implement the new law requiring that a HUB have its principal place of business in Texas.

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My second question is whether the General Services Commission was authorized to promulgate rules to implement HUB graduation procedures.

I look forward to your response. Please let me know if I can be of further assistance to you.

Sincerely,

A handwritten signature in black ink, reading "Rodney Ellis". The signature is written in a cursive style with a large, sweeping initial "R" and a distinct "Ellis" at the end.

Rodney Ellis  
Senator, District 13

RE/afh

Enclosure

**General Services Commission  
Executive Administration Division**

**§111.23 Graduation Procedures**

- (a) A HUB shall be graduated from being used to fulfill HUB procurement utilization goals when it has maintained gross receipts or total employment levels during four (4) consecutive years which exceed the following schedule which is extracted from the U.S. Small Business Administration's size standard for firms within similar primary four-digit Standard Industrial Classification codes as stated in 13 Code of Federal Regulations 121.201 for the following categories:
- (1) heavy construction other than building construction;
  - (2) building construction, including general contractors and operative builders;
  - (3) special trade construction;
  - (4) medical, financial and accounting services;
  - (5) architectural/engineering and surveying services;
  - (6) other services including legal services;
  - (7) commodities wholesale;
  - (8) commodities manufacturers.
- (b) Firms which have achieved the size standards identified in subsection (a) will be assumed to have reached a competitive status in overcoming the effects of discrimination. The commission shall review as part of the certification or recertification process the financial revenue or relevant data of firms to determine whether the size standards identified in subsection (a) have been met.
- (c) Businesses that have graduated from the HUB program in accordance with this section or have been decertified in accordance with sections 111.17 to 111.22 of this title may not be included in meeting agency goals.

**General Services Commission  
Executive Administration Division**

- (d) The General Services Commission shall review U.S. Small Business Administration size standards each Fiscal Year to determine the need to reassess HUB graduation size standards and make changes effective September 1 of each Fiscal Year.